

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

OSCAR GARCIA LOPEZ,	}	Case No. EDCV 15-01808-KES
Plaintiff,		MEMORANDUM OPINION AND
v.		ORDER
CAROLYN W. COLVIN, Acting		
Commissioner of Social Security,		
Defendant.	}	

Plaintiff Oscar Garcia Lopez (“Plaintiff”) appeals the final decision of the Administrative Law Judge (“ALJ”) denying his application for Social Security Disability Insurance benefits (“DIB”) and Supplemental Security Income (“SSI”). For the reasons discussed below, the ALJ’s decision is AFFIRMED.

**I.**

**BACKGROUND**

Plaintiff applied for DIB and SSI on March 4, 2013, alleging the onset of disability on December 1, 2007, when he was 31 years old. Administrative

1 Record (“AR”) 194-99, 200-06. He later withdrew his SSI claim and alleged  
2 the application filing date as the date of onset. AR 30.

3 On January 29, 2015, an ALJ conducted a hearing, at which Plaintiff,  
4 who was represented by counsel, appeared and testified. AR 27-58. On  
5 March 13, 2015, the ALJ issued a written decision denying Plaintiff’s request  
6 for benefits. AR 7-26.

7 The ALJ found that Plaintiff had the severe impairments of “obesity,  
8 depression, diabetes, and right knee degenerative disc disease.” AR 13. The  
9 ALJ did not find that Plaintiff has any severe mental impairments other than  
10 depression. Id. Although Plaintiff alleged a traumatic brain injury from falling  
11 of his bicycle as a child, the ALJ found the record devoid of any evidence  
12 concerning that injury, such that it was not a “medically determinable  
13 impairment.” Id. At the hearing, Plaintiff’s lawyer agreed that there was no  
14 evidence of a brain injury in the record. AR 44.

15 The ALJ also found that Plaintiff “does not have a medically  
16 determinable organic brain disorder, intellectual disability, borderline  
17 intellectual functioning (“BIF”) disorder, or other cognitive disorder ....” AR  
18 13. The ALJ acknowledged that while Drs. Unwalla and Larson had  
19 diagnosed Plaintiff with BIF and cognitive disorder, the ALJ found those  
20 diagnoses unreliable to the extent they were based on Plaintiff’s self-reported  
21 symptoms and tests administered by the doctors, because Plaintiff “is not a  
22 reliable historian or test taker.” Id. The ALJ based this conclusion on  
23 Plaintiff’s “numerous inconsistent statements and poor work history.” Id. The  
24 ALJ discussed Plaintiff’s work history and inconsistent statements later in his  
25 opinion, as well as at the hearing. AR 17-18, 42-44.

26 Notwithstanding his impairments, the ALJ concluded that Plaintiff had  
27 the residual functional capacity (“RFC”) to perform a reduced range of light  
28 work. AR 15-16. In addition to exertional limitations, the ALJ determined

1 that Plaintiff is “capable of semi-skilled work that can be learned through  
2 demonstration; and no fast-paced work.” AR 16. The ALJ based this  
3 determination on the fact that Plaintiff admitted he had previously performed  
4 semi-skilled work as a machine operator and that he learned that work through  
5 direct demonstration. AR 31-32, 41-42.

6 Based on this RFC and the testimony of a vocational expert (“VE”), the  
7 ALJ found that Plaintiff would be able to perform the unskilled jobs of  
8 electronics worker, shoe packer, and sewing machine operator. AR 22. The  
9 ALJ therefore concluded that Plaintiff is not disabled. Id.

## 10 II.

### 11 ISSUES PRESENTED

12 Plaintiff raises only one issue: whether the ALJ properly considered the  
13 opinions of two examining doctors, Khushro Unwalla, M.D. (a psychiatrist)  
14 and Douglas W. Larson, Ph.D. (a psychologist), concerning the disabling  
15 effects of Plaintiff’s mental impairments. See Dkt. 31, Joint Stipulation (“JS”)  
16 at 4.

## 17 III.

### 18 DISCUSSION

#### 19 A. Applicable Law.

20 In determining a claimant’s RFC, the ALJ must consider limitations  
21 imposed by all of the claimant’s impairments, even those that are not severe,  
22 and evaluate “all of the relevant medical and other evidence,” including the  
23 claimant’s testimony. SSR 96-8p, 1996 SSR LEXIS 5. However, if a claimant  
24 makes “no allegation of a physical or mental limitation or restriction of a  
25 specific functional capacity, and [there is] no information in the case record  
26 that there is such a limitation or restriction, the adjudicator must consider the  
27 individual to have no limitation or restriction with respect to that functional  
28 capacity.” Id. at \*8.

1 In determining the limitations imposed by a claimant's impairments, the  
2 ALJ must consider the medical evidence and resolve conflicts. If the record  
3 contains evidence "susceptible to more than one rational interpretation, we  
4 must uphold the [Commissioner's] findings if they are supported by inferences  
5 reasonably drawn from the record." Molina v. Astrue, 674 F.3d 1104, 1111  
6 (9th Cir. 2012).

7 In deciding how to resolve conflicts between medical opinions, the ALJ  
8 must consider that there are three types of physicians who may offer opinions  
9 in Social Security cases: (1) those who directly treated the plaintiff, (2) those  
10 who examined but did not treat the plaintiff, and (3) those who did not treat or  
11 examine the plaintiff. See 20 C.F.R. §§ 404.1527(c); Lester v. Chater, 81 F.3d  
12 821, 830 (9th Cir. 1995) (as amended on April 9, 1996). A treating physician's  
13 opinion is generally entitled to more weight than that of an examining  
14 physician, which is generally entitled to more weight than that of a non-  
15 examining physician. Lester, 81 F.3d at 830. Thus, the ALJ must give  
16 "specific and legitimate" reasons for rejecting a treating physician's opinion in  
17 favor of a non-treating physician's contradictory opinion or an examining  
18 physician's opinion in favor of a non-examining physician's opinion. Orn v.  
19 Astrue, 495 F.3d 625, 632 (9th Cir. 2007) (citing Reddick v. Chater, 157 F.3d  
20 715, 725 (9th Cir. 1998)); Lester, 81 F.3d at 830-31 (citing Murray v. Heckler,  
21 722 F.2d 499, 502 (9th Cir.1983)).

22 If the treating physician's opinion is uncontroverted by another doctor, it  
23 may be rejected only for "clear and convincing" reasons. Lester, 81 F.3d 821,  
24 830 (9th Cir. 1996) (citing Baxter v. Sullivan, 923 F.2d 1391, 1396 (9th Cir.  
25 1991)). However, "[t]he ALJ need not accept the opinion of any physician,  
26 including a treating physician, if that opinion is brief, conclusory, and  
27 inadequately supported by clinical findings." Thomas v. Barnhart, 278 F.3d  
28 947, 957 (9th Cir. 2002); accord Tonapetyan v. Halter, 242 F.3d 1144, 1149

(9th Cir. 2001). The factors to be considered by the adjudicator in determining the weight to give a medical opinion include: “[l]ength of the treatment relationship and the frequency of examination” by the treating physician; and the “nature and extent of the treatment relationship” between the patient and the treating physician. Orn, 495 F.3d at 631; see also 20 C.F.R. §§ 404.1527(d)(2)(i)-(ii), 416.927(d)(2)(i)-(ii).

In determining a claimant’s RFC, the ALJ should consider those limitations for which there is support in the record, but need not consider properly rejected evidence. Bayliss v. Barnhart, 427 F.3d 1211, 1217 (9th Cir. 2005) (“Preparing a function-by-function analysis for medical conditions or impairments that the ALJ found neither credible nor supported by the record is unnecessary.”); Batson v. Comm’r of Soc. Sec. Admin., 359 F.3d 1190, 1197 (9th Cir. 2004) (“The ALJ was not required to incorporate evidence from the opinions of Batson’s treating physicians, which were permissibly discounted.”).

**B. The ALJ Gave Specific and Legitimate Reasons for Discounting Dr. Unwalla’s and Dr. Larson’s Opinions.**

**1. Summary of Dr. Unwalla’s opinions.**

Dr. Unwalla conducted a psychiatric examination of Plaintiff on May 18, 2013. AR 392-98. Dr. Unwalla took a medical history and performed a mental status examination. AR 392-94. Plaintiff reported to Dr. Unwalla that he was “kicked out of school” due to behavioral problems in the eighth grade and never learned to read or write. AR 392. Plaintiff further reported that he lived with his parents and his three children. Id. Dr. Unwalla noted that Plaintiff drove himself to the appointment. Id. He also observed that Plaintiff was appropriately dressed and groomed. Id. He was superficially cooperative and engaged, but Dr. Unwalla had to repeat questions several times before Plaintiff understood them. AR 392, 394.

1        Upon administering a mental status exam, Dr. Unwalla observed that  
 2 Plaintiff had “some thought blocking,” “poverty of thought content,” could  
 3 not do serial threes, had “poor” insight and judgment, and a “poor” fund of  
 4 knowledge. AR 394. He also noted slowed and soft speech, blunted affect,  
 5 and diminished concentration. Id. Dr. Unwalla stated that Plaintiff “appeared  
 6 to have poor intellectual functioning.” AR 395. Dr. Unwalla diagnosed  
 7 Plaintiff as suffering from borderline intellectual functioning with a Global  
 8 Adult Function (“GAF”) score of 59.<sup>1</sup> Id.

9        Dr. Unwalla noted “no specific mental health issues except intellectual  
 10 deficits.” Id. Based on these deficits, he opined that Plaintiff had only mild  
 11 difficulty in maintaining composure and even temperament. Id. He  
 12 concluded, however, that Plaintiff had moderate difficulties in most other areas  
 13 of functioning, as follows:

14            [The claimant] has moderate difficulties in maintaining  
 15 social functioning. He has moderate difficulties focusing and  
 16 maintaining attention. He has moderate difficulties in  
 17 concentration, persistence, and pace. The level of personal  
 18 independence is adequate. He is intellectually and psychologically

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 20        <sup>1</sup> American Psychiatric Association, Diagnostic and Statistical Manual  
 21 of Mental Disorders (“DSM”) (4th ed. 2000), p. 34 (describing the GAF scale  
 22 of 1-100 and noting that a score between 51-60 indicates moderate difficulties,  
 23 whereas a score between 61-70 indicates a patient with “some mild symptoms”  
 24 but who is “generally functioning pretty well, [and] has some meaningful  
 25 interpersonal relationships.” GAF scores reflect a clinician’s “rough estimate  
 26 of an individual’s psychological, social, and occupational functioning used to  
 27 reflect the individual’s need for treatment.” Vargas v. Lambert, 159 F.3d 1161,  
 28 1164 n. 2 (9th Cir.1998). The most recent edition of the DSM “dropped” the  
 GAF scale, citing its “lack of conceptual clarity and questionable psychological  
 measurements in practice.” Curtin v. Colvin, 2016 U.S. Dist. LEXIS 61973, at  
 \*10-11 n. 2 (C.D. Cal. May 9, 2016), citing DSM (5th ed. 2012).

1 capable of performing activities of daily living (ADLs).

2 Based on the objective findings presented during this  
3 interview, the claimant would have moderate limitations  
4 performing simple and repetitive tasks and moderate limitations  
5 performing detailed and complex tasks. The claimant would have  
6 moderate difficulties to be able to perform work activities on a  
7 consistent basis without special or additional supervision. The  
8 claimant would have moderate limitations completing a normal  
9 workday or work week due to their mental condition. The  
10 claimant would have moderate limitations accepting instructions  
11 from supervisor and interacting with coworkers and with the  
12 public. He would have moderate difficulties to be able to handle  
13 the usual stresses, changes and demands of gainful employment.

14 AR 395.

15 **2. Summary of Dr. Larson's opinions.**

16 Dr. Larson conducted a psychological examination on June 27, 2013.  
17 AR 399-407. Dr. Larson took a medical history, performed a mental status  
18 examination, and conducted several memory and intelligence tests. AR 399-  
19 403. Dr. Larson described Plaintiff as "generally pleasant and cooperative"  
20 but "slow." AR 401. Dr. Larson noted "somewhat slowed" speech,  
21 "somewhat impaired" thought process, mild poverty of thought content,  
22 "reduced" memory and concentration, and "limited" insight and judgment.  
23 Id. Dr. Larson diagnosed cognitive disorder and mood disorder. AR 403.

24 Plaintiff reported to Dr. Larson that he had a driver's license, but had  
25 not driven in three months.<sup>2</sup> AR 399. Dr. Larson opined that Plaintiff's

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26  
27 <sup>2</sup> In contrast, Plaintiff told Dr. Unwalla that he drove himself to that  
28 appointment about one month earlier, on May 18, 2013. AR 392.



1 cognitive problems did not impair his ability to do chores, yard work, cooking  
 2 shopping, and running errands. AR 400. At the same time, he noted that  
 3 Plaintiff “does not do any chores.” AR 401. Instead, he “get up, watches  
 4 some TV, eats and sleeps.” Id. Ultimately, Dr. Larson provided the following  
 5 functional assessment of Plaintiff:

- 6 1. **Not** impaired in the ability to understand, remember, and  
 7 complete simple commands.
- 8 2. **Markedly** impaired in the ability to do understand, remember,  
 9 and complete complex commands.
- 10 3. **Moderately** impaired in the ability to interact appropriately with  
 11 supervisors, co-workers or the public.
- 12 4. **Moderately** impaired in the ability to comply with job rules  
 13 such as safety and attendance.
- 14 5. **Moderately** impaired in the ability to respond to change in the  
 15 normal workplace setting.
- 16 6. **Moderately** impaired in the ability to maintain persistence and  
 17 pace in a normal workplace setting.

18 AR 403.

### 19 **3. The ALJ’s Reasons for Discounting these Opinions.**

20 The ALJ agreed that Plaintiff has “moderate” impairments with regard  
 21 to concentration, persistence, and pace. AR 15. The ALJ, however, found  
 22 that Plaintiff’s limitations in the areas of daily living and social functioning  
 23 were only “mild.” AR 14. With regard to his activities of daily living, the ALJ  
 24 cited the fact that Plaintiff was “able to do his own grocery shopping without  
 25 assistance” citing Ex. 2F p. 83<sup>3</sup> [AR 359], took his children to school, citing  
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27 <sup>3</sup> This exhibit is a Kaiser treatment note for knee pain dated March 12,  
 28 2013, in which Plaintiff reported that he “uses no aids, able to do shopping



1 Ex. 8F<sup>4</sup>, and attended church “once a week,” citing Ex. 6E<sup>5</sup> [AR 257]. AR 14.  
2 The ALJ reasoned that he had adequately accounted for Plaintiff’s difficulties  
3 in maintaining concentration, persistence, and pace by limiting Plaintiff to  
4 work that can be learned through demonstration and that is not fast-paced.  
5 AR 18.

6 The ALJ expressly found a “lack of evidence” that Plaintiff’s depression  
7 more than mildly impairs his social functioning. AR 20. The ALJ cited the  
8 fact that Plaintiff reported his family relationships as “good”<sup>6</sup> (AR 19) and was  
9 able to talk on the phone with others and attend church (AR 14). The ALJ

10 \_\_\_\_\_  
11 without assistance and is able to walk unlimited distance.” AR 359. In  
12 contrast, in his Adult Function Report dated September 11, 2013, Plaintiff said  
13 that he does no shopping and can only walk 100 feet. AR 256, 258.

14 <sup>4</sup> This exhibit is a 214-page collection of Kaiser records. AR 1007-1220.  
15 The ALJ did not provide a pin cite, and this Court does not see a reference in  
16 Exhibit 8F to Plaintiff taking his children to school. In Exhibit 7F, Kaiser  
17 noted that Plaintiff reported “he does wake up early to get his children ready  
18 for school.” AR 1004. In his Adult Function Report, Plaintiff said that his  
19 mother, Adela Garcia, takes his children “to and from school.” AR 254. At  
the hearing, he testified that he was “more or less” able to care for his children,  
but his parents helped with “getting them ready for school, taking them to  
school, [and] making dinner for them.” AR 33-34.

20 <sup>5</sup> Concerning church attendance, Plaintiff’s Adult Function Report says  
21 that he goes “once in a while ... when feeling good ....” AR 257. At the  
22 hearing in January 2015, he testified that he typically leaves the house only  
23 once or twice a week to go to medical appointments. AR 46-47. With regard  
24 to church, he testified that he “was going for a while” but then it got “hard  
going up and down, up and down, to all their events.” AR 48.

25 <sup>6</sup> Plaintiff told Dr. Unwalla that his relationship with his family was  
26 “good.” AR 394. Plaintiff told Dr. Larson that his relationship with his family  
27 was “fair.” AR 401. In his Adult Function Report, Plaintiff said he had  
28 problems getting along with his family, but he got along “well” with authority  
figures. AR 258-59.

1 also found that Plaintiff's depression was not disabling, because Plaintiff did  
2 not exhibit symptoms any more severe than a "depressed mood" and he never  
3 received treatment. AR 18, citing AR 426 (recommending that Plaintiff "self  
4 refer" for mental health treatment, with no record he ever did) and AR 391  
5 (explaining Plaintiff participated in court-ordered "family counselling and  
6 parenting classes to address issues with his daughter"). For these reasons, the  
7 ALJ expressly declined to restrict Plaintiff to jobs that would limit his contact  
8 with the public. AR 20.

9 In discussing Dr. Unwalla's opinions, the ALJ noted that they were  
10 based, in part, on limitations reported by Plaintiff which the ALJ found not  
11 credible due to inconsistencies. For example, Dr. Unwalla noted that Plaintiff  
12 never learned to read, yet Plaintiff testified at the hearing that he had passed  
13 the written driver's license test and could "more or less" read. AR 19, citing  
14 AR 34, 392. When the ALJ asked if he could read instructions "on the side of  
15 a box on how to prepare something in a microwave," Plaintiff answered, "No  
16 – maybe, yes." AR 34. Dr. Unwalla noted that Plaintiff said he does not do  
17 any shopping, but Plaintiff told his Kaiser doctors that he could "do shopping  
18 without assistance." AR 19, citing AR 359, 393.

19 The ALJ also reasoned that Dr. Unwalla's findings were not  
20 corroborated by objective evidence outside of the tests he administered which  
21 could be manipulated by Plaintiff. AR 19, 20. The ALJ concluded that  
22 Plaintiff had likely manipulated the test results for a number of reasons. First,  
23 the ALJ cited inconsistencies in Plaintiff's statements concerning the severity  
24 of his impairments. AR 17. Second, the ALJ cited the fact that Plaintiff had  
25 performed semi-skilled work in the past, which is inconsistent with him  
26 suffering from disabling cognitive impairments. AR 19, citing Plaintiff's  
27 hearing testimony at AR 39-42. Third, the ALJ cited Plaintiff's "poor work  
28 history," suggesting that Plaintiff was capable of working but unmotivated to

1 maintain employment. Id., citing AR 212-15 (listing short periods of  
2 employment at Wal-Mart, Rancho Ready Mix, Dan Copp Crushing,  
3 RemedyTemp, California Auto Dealers Exchange, Target, Boston Market, and  
4 other businesses). Fourth, the ALJ cited Plaintiff's history of arrests. AR 19,  
5 citing AR 400 (Plaintiff told Dr. Larson he was "arrested three time for graffiti  
6 charges" and spent "three days in jail" and also "had a gun charge" when he  
7 was 18 years old.<sup>7</sup>).

8 The ALJ discounted Dr. Larson's opinions for the same reasons that he  
9 discounted Dr. Unwalla's opinions. AR 20. The ALJ repeated that Plaintiff  
10 "is not a reliable historian or test taker." Id.

#### 11 **4. Summary of Plaintiff's Arguments.**

12 First, Plaintiff focuses on the opinion of Dr. Unwalla that Plaintiff would  
13 have "moderate limitations completing a normal workday or workweek due to  
14 [his] mental condition" and the opinion of Dr. Larson that Plaintiff is  
15 moderately impaired "in the ability to comply with job rules such as safety and  
16 attendance." JS at 8, citing AR 395, 403. Plaintiff argues that the "ability to  
17 maintain work activity on a consistent basis without excessive absenteeism is  
18 the hallmark of substantial gainful work activity," and the ALJ did not give  
19 sufficient reasons for discounting the attendance-related opinions of Drs.  
20 Unwalla or Larson. Id.

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21  
22 <sup>7</sup> Plaintiff told Dr. Unwalla he had been arrested and jailed twice, last  
23 released in 1998. AR 393. At the hearing, Plaintiff testified that he was  
24 arrested once for possession of burglary tools and once for shooting a gun in  
25 the air. AR 49. He testified that the gun incident happened "in the last 10  
26 years" (i.e., since 2005, when he was about 28, not 18). Id. He also said that  
27 he went to jail once after being pulled over while driving, because he "had a  
28 warrant or something for a ticket." AR 50. He estimated he had been arrested  
"maybe three" times. Id. He testified that his job at Tree Island Wire in 2000  
had been "right after his probation." AR 52, 221.

1 Second, Plaintiff argues that the ALJ did not adequately account for  
2 Plaintiff's moderate difficulties with concentration, persistence, and pace.  
3 Plaintiff contends that someone with moderate difficulties in this area will  
4 need regular reminders to stay on task. JS at 8-9. During the hearing, the ALJ  
5 asked the VE whether a hypothetical worker with Plaintiff's RFC who also  
6 needed "regular reminders on how to perform their job and reminders to stay  
7 on task" would be able to perform the jobs of electronics worker, shoe packer,  
8 and sewing machine operator. AR 57. The VE responded that he would not.  
9 Id.

10 Third, Plaintiff argues that the ALJ may not discount the opinions of  
11 mental health professionals for the same reasons that the ALJ discounted  
12 Plaintiff's testimony concerning the severity of his symptoms (i.e., that Plaintiff  
13 is not a reliable historian or test taker). According to Plaintiff, if Drs. Unwalla  
14 and Larson deemed Plaintiff's answers to mental status exam questions  
15 sufficiently reliable to provide a basis for their opinions, then the ALJ cannot  
16 second-guess those answers. JS at 10, citing Ryan v. Commissioner of Social  
17 Sec., 528 F.3d 1194, 1199-1200 (9th Cir. 2007) for the premise that "an ALJ  
18 does not provide clear and convincing reasons for rejecting an examining  
19 physician's opinion by questioning the credibility of the patient's complaints  
20 where the doctor does not discredit those complaints and supports his ultimate  
21 opinion with his own observations." At the hearing, when Plaintiff's attorney  
22 suggested that Plaintiff's cognitive scores were so low that he met a listed  
23 impairment, the ALJ responded, "I would agree if those test scores are valid. I  
24 think tests can be manipulated and especially psychological examinations. A  
25 person can give a poor effort and manipulate the test simply." AR 43.

## 26 **5. Summary of Respondent Arguments.**

27 Respondent argues that the ALJ's failure to credit some of the  
28 "moderate" limitations found by Drs. Larson and Unwalla is, at worst,

1 harmless error. JS at 16. Respondent points out that mental impairments  
2 causing only moderate limitations in the ability to maintain regular attendance  
3 and stay on-task while at work need not be accommodated through limitations  
4 in the RFC. Id., citing Hoopai v. Astrue, 499 F.3d 1071, 1077 (9th Cir. 2007).  
5 In Hoopai, the claimant argued that his depression, found “severe” at step two,  
6 needed to be accounted for in his RFC. The Ninth Circuit upheld the ALJ’s  
7 determination that “Hoopai’s depression was not sufficiently severe such that  
8 it significantly affects his ability to work beyond the exertional limitations.”  
9 Id. at 1076. There was substantial evidence in the record to support the ALJ’s  
10 determination, including two psychological evaluations that diagnosed Hoopai  
11 with only “moderately significant forms of depression.” Id. A third  
12 doctor found Hoopai to be moderately limited in “his ability to perform  
13 activities within a schedule, maintain regular attendance, and be punctual with  
14 customary tolerance; and his ability to complete a normal workday and  
15 workweek without interruption from psychologically-based symptoms and to  
16 perform at a consistent pace without an unreasonable number and length of  
17 rest periods.” Id. at 1077. In response, the Ninth Circuit stated, “We have not  
18 previously held mild or moderate depression to be a sufficiently severe non-  
19 exertional limitation that significantly limits a claimant’s ability to do work  
20 beyond the exertional limitation.” Id. The Ninth Circuit affirmed the ALJ’s  
21 RFC determination which contained only exertional limitations. Id.

## 22 **6. Analysis.**

23 a. The ALJ gave specific and legitimate reasons for discounting  
24 the opinions of Drs. Unwalla and Larson.

25 First, the ALJ properly discounted the opinions of Drs. Unwalla and  
26 Larson as inconsistent with Plaintiff’s known history of performing semi-  
27 skilled work. Plaintiff testified that he was a “machine operator” for Tree  
28 Island Wire. AR 31. He operated a machine that fabricated “the wire that

1 goes outside of a house before ... the stucco.” Id. He held that job for eight  
2 months, including one month of training when someone showed him how to  
3 run the machine. AR 32. He was let go when he could not keep up with the  
4 quantity of output demanded, because standing all day was “too hard” for  
5 him. AR 39-41.

6 The VE testified that this was semi-skilled work with a reasoning level of  
7 3. AR 41. The Dictionary of Occupational Titles (“DOT”) specifies the  
8 “reasoning level” required for each listed job using six defined levels.  
9 Reasoning Level 1 requires the ability to “carry out simple one- or two-step  
10 instructions,” whereas Reasoning Level 6 requires the application of  
11 “principles of logical or scientific thinking to a wide range of intellectual and  
12 practical problems.” Id. In between these two extremes, Reasoning Level 2  
13 requires the ability to “apply commonsense understanding to carry out detailed  
14 but uninvolved written or oral instructions. Deal with problems involving a  
15 few concrete variables in or from standardized situations.” Id. In contrast,  
16 Reasoning Level 3 requires slightly higher reasoning abilities, as follows:  
17 “Apply commonsense understanding to carry out instructions furnished in  
18 written, oral, or diagrammatic form. Deal with problems involving several  
19 concrete variables in or from standardized situations.” Id.

20 Dr. Unwalla’s opinion that Plaintiff suffers from “borderline intellectual  
21 functioning” and would have moderate difficulty performing even simple,  
22 repetitive tasks (AR 395) is inconsistent with Plaintiff’s history of working a  
23 job requiring Reasoning Level 3 and only leaving that job when its exertional  
24 demands (i.e., standing all day) diminished his output, causing his employer to  
25 let him go. So too Dr. Larson’s opinions that Plaintiff is “moderately”  
26 impaired in interacting with others, complying with job site rules, and  
27 responding to changes in a “normal” workplace setting (AR 403) are  
28 inconsistent with Plaintiff’s having worked as a machine operator for eight



1 months until the job's exertional demands became too difficult. Thus, the  
2 inconsistency identified by the ALJ is supported by substantial evidence in the  
3 record. See Hall v. Barnhart, 210 F. App'x 705, 706 (9th Cir. 2006) (holding  
4 ALJ properly discounted doctor's opinion that claimant could not "fulfill the  
5 basic requirements of any job" when that opinion was inconsistent with the  
6 fact that claimant worked at Sears for "seven years and his condition has not  
7 materially changed since that time").

8 Second, an ALJ may discount medical opinions that rely on the  
9 claimant's subjective complaints where the ALJ has properly discounted the  
10 claimant's credibility. Tonapetyan v. Halter, 242 F.3d 1144, 1149 (9th Cir.  
11 2001). Similarly, "an ALJ may discount an opinion based on tests within the  
12 claimant's control and subject to manipulation...." Sutliff v. Colvin, 2016 U.S.  
13 Dist. LEXIS 7884, at \*13 n. 7 (C.D. Cal. Jan. 22, 2016), citing Ukolov v.  
14 Barnhart, 420 F.3d 1002, 1006 (9th Cir. 2005). Thus, the ALJ's findings that  
15 Plaintiff was an unreliable historian and test taker were both adequate reasons  
16 to discount the opinions of Drs. Unwalla and Larson.

17 The ALJ's determination that Plaintiff was unreliable was, in turn,  
18 supported by substantial evidence in the record. As noted above, Plaintiff  
19 made inconsistent statements about his ability to shop unassisted (cf., AR 359  
20 and 256), his ability to read (cf., AR 34 and 392), driving (cf., AR 392 and  
21 399), and his criminal history (see n. 7, supra).<sup>8</sup> Thus, this second reason was

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22  
23 <sup>8</sup> Plaintiff relies on Ryan, 528 F.3d at 1199-1200, to assert that an ALJ  
24 cannot reject an examining physician's opinion by questioning the credibility  
25 of the patient's complaints. JS at 10. This case is distinguishable from Ryan  
26 because the ALJ here relied explicitly upon substantial, objective evidence of  
27 Plaintiff's lack of credibility as a basis for rejecting the opinions of Drs.  
28 Unwalla and Larson. See Calkins v. Astrue, 384 Fed. App'x 613, 615 (2010).  
Like in Calkins, it appears that in formulating their opinions, both Drs.  
Unwalla and Larson relied heavily on Plaintiff's subjective reporting.



1 also supported by substantial evidence in the record.

2 Third, the ALJ rejected the opinions of Dr. Unwalla and Larson that  
 3 Plaintiff has “moderate” difficulty interacting with others based on “lack of  
 4 evidence.” AR 20. Indeed, the record shows that Plaintiff reported (1) his  
 5 family relationships were “good” (AR 394), (2) he got along “well” with  
 6 authority figures (AR 258-59), (3) he sometimes attended church (AR 48, 257),  
 7 and (4) he never received treatment for depression, social anxiety, or any  
 8 similar mental disorder that would impair his social interactions (AR 391,  
 9 426). Thus, the ALJ properly concluded that the opinions of Drs. Unwalla  
 10 and Larson concerning Plaintiff’s social functioning were inconsistent with the  
 11 record as a whole.

12 b. Any error was harmless.

13 “A decision of the ALJ will not be reversed for errors that are harmless.”  
 14 Burch v. Barnhart, 400 F.3d 676, 679 (9th Cir. 2005). Generally, an error is  
 15 harmless if it either “occurred during a procedure or step the ALJ was not  
 16 required to perform,” or if it “was inconsequential to the ultimate non-  
 17 disability determination.” Stout v. Comm’r, Soc. Sec. Admin., 454 F.3d 1050,  
 18 1055 (9th Cir. 2006).

19 Here, the ALJ accounted for Plaintiff’s moderate difficulties in  
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21 Plaintiff’s medical health history was obtained entirely through Plaintiff’s  
 22 reporting, as neither doctor reviewed Plaintiff’s medical records. Additionally,  
 23 it appears unlikely that the doctors’ diagnoses were based primarily on the  
 24 “relatively superficial” testing they administered Plaintiff during their  
 25 consultations. See id. Just as an ALJ properly may discount a doctor’s opinion  
 26 that is *solely* based on a non-credible plaintiff’s reporting, see Bray v. Comm’r  
 27 of Soc. Sec. Admin., 554 F.3d 1219, 1222 (9th Cir. 2009), “[a]n ALJ must be  
 28 permitted to discount an opinion based *principally* upon a [plaintiff’s] self-  
 reporting if the record contains objective evidence that the self-reporting is not  
 credible.” Calkins, 38 Fed. App’x at 615.

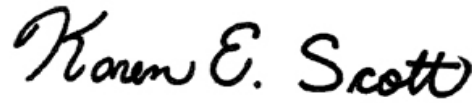
1 maintaining concentration, persistence, and pace by limiting him to jobs that  
2 do not require fast-paced work and that can be learned by demonstration. The  
3 ALJ properly discredited the opinions of Drs. Unwalla and Larson that  
4 Plaintiff has moderate difficulty in the area of social functioning. The other  
5 “moderate” limitations found by Drs. Unwalla and Larson (i.e., moderate  
6 difficulties with attendance, completing a normal workday, working without  
7 special supervision, and responding to change) are comparable to the  
8 limitations discussed in Hoopai which did not warrant any non-exertional  
9 limitations in the RFC.

10 **IV.**

11 **CONCLUSION**

12 Based on the foregoing, IT IS ORDERED THAT judgment shall be  
13 entered AFFIRMING the decision of the Commissioner denying benefits.

14  
15 Dated: December 29, 2016



16  
17 KAREN E. SCOTT  
18 United States Magistrate Judge  
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